



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE
DIRECTOR

June 18, 1991
AO-91-13

Mr. Paul McCarthy
P.O. Box 962
Lynnfield, MA 01940

Re: Payment of legal expenses

Dear Mr. McCarthy:

This letter is in response to your February 21, 1991, letter requesting an advisory opinion and the letter received May 8, 1991, from your counsel, Thomas Mason, supplementing your request.

In these letters as well as conversations with the Office's General Counsel, you or your counsel have stated that you were the 1990 Republican nominee for Secretary of State. On September 29, 1991, during a campaign appearance at a Holy Cross football game in Worcester, you were arrested by the Worcester police on a paid detail to Holy Cross, handcuffed, put into a police vehicle and charged with disorderly behavior involving the obstruction of a gate, a criminal offense. You also claim that the arrest was politically motivated. After the case was tried, you were found not guilty by a directed verdict and acquitted of all charges. You have incurred significant legal expenses in connection with this trial to clear your name.

You have asked whether you may establish a separate legal defense fund to offset the expenses incurred in your successful defense. More specifically, your counsel has asked, "May Mr. McCarthy legally set up a committee which would be separate from his principal campaign committee to pay the legal expenses he has incurred in defending a criminal charge in court?"

The threshold question that must be addressed concerns the nature and purpose of expenditures for your legal defense. M.G.L. c.55, s.6 governs expenditures by all political

committees and provides that committees for constitutional offices such as Mr. McCarthy's may:

receive, pay and expend money or other things of value for reasonable and necessary expenses directly related to the campaign of such candidate but shall not make any expenditure that is primarily for the candidate's or any other person's personal use . . .

Regulations promulgated by this Office to implement this section prohibit:

Any expenses relative to alleged violations of the law, other than those which have arisen solely as a function of an individual assuming and performing necessary duties and responsibilities as a candidate or treasurer of a political committee. See 970 CMR 2.06 (a)(2)

The incident which you have described that led to your arrest occurred during a campaign appearance and while you were campaigning. Actively campaigning during a campaign appearance is "reasonable and necessary" and "related to [your] campaign. It is also an event which occurred solely as a function of your "assuming and performing" your "necessary duties and responsibilities as a candidate." Therefore, the legal expenses associated with your arrest and trial would meet the requirements set forth in the statute and the regulations.

Although the charge of disorderly conduct was against you personally and not your committee, it arose out of your campaign activity. For the above reasons, it is the opinion of this Office that the expenses of your successful legal defense would be permitted expenditures under M.G.L. c.55, s.6 and not prohibited as an "expenditure that is primarily for [your] . . . personal use."

The previous conclusion leads inevitably to the answer to your question.

M.G.L. c.55, s.5 provides, in pertinent part:

The statement of a political committee organized on behalf of a candidate shall also include the written consent of said candidate. No candidate shall give his consent to more than one such committee.

Therefore, it is the opinion of this Office that you may not legally set up another committee to raise funds to pay for the costs of your legal defense.

You have suggested that the above analysis and conclusions "effectively prevent [you] from receiving a full and fair defense in court." We disagree. The implication of this Office's opinion is not that funds to pay for your legal expense cannot be raised but only that the amounts raised must

be reported¹ and subject to certain contribution limitations. Moreover, unlike persons who are not candidates for public office, you currently have a political committee which has the authority to raise monies to help defray the cost of your legal defense.

You have also suggested that the expenses associated with your defense are "extraordinary expenses, not normally incurred in the course of a campaign." Again, we disagree. While significant legal costs may be somewhat unusual, they are not uncommon expenditures for political committees. Campaigns often involve issues that need to be addressed through legal actions. This Office has, in fact, previously issued advisory opinions involving unusual expenditures for legal costs and concluded that such expenses were, in certain cases, permitted campaign expenditures.

To conclude that you are entitled to establish a separate defense fund would completely undermine the fundamental purposes of the campaign finance law. The law is designed to insure that the accounts of candidates, who are raising money for political purposes, are subject both to public scrutiny and to certain contribution limitations to prevent corruption or the appearance of corruption. Indeed, the only reason that can be gleaned for establishing another committee is to avoid the very contribution limitations of the campaign finance law. Simply put, if candidates could have multiple committees raising monies for various specific political purposes the contribution limitations established in chapter 55 would, in a word, be meaningless.

In view of the above analysis, there are a number of options for you to consider in paying for your legal costs. First, of course, you may pay for these costs yourself.

¹ M.G.L. c.55, s.18 provides in the eleventh paragraph that each report required to be filed pursuant to section eighteen shall disclose:

(16) the amount and date of each then existing liability remaining unfulfilled and in force when the report is made, the name and address of the person to whom the liability exists, and a clear statement of the purpose for which it was incurred.

In addition, M.G.L. c.55, s.19 (f) which governs the constitutional candidate's liabilities or financial obligations further provides, in pertinent part that "such [depository] accounts shall remain in existence until the election and so long thereafter as a candidate or political committee has unpaid obligations still outstanding.

Paul McCarthy
June 18, 1991


Second, your political committee may raise monies to pay for your legal fees subject to the reporting and contribution requirements of chapter 55.

Third, you may try to settle any outstanding liabilities or obligations pursuant to the Office's regulations regarding the settlement of debt. See 970 CMR 1.03. Finally, if you are unable, after reasonable and good faith efforts, to pay your legal expenses or reach a settlement regarding these expenses consistent with 970 CMR 1.03, you may submit to this Office for its review and approval an alternative proposal regarding the payment of your legal expenses. If you subsequently decide to pursue this last alternative, you and your attorney should discuss the proposal in advance with the Office's General Counsel.

This opinion has been rendered solely in the context of M.G.L. c.55 and has been based on the representations in your and your legal counsel's letters and telephone conversations with the Office's General Counsel relative to this matter.

Should you have additional questions, please do not hesitate to contact this Office.

Very truly yours,


Mary F. McTigue
Director

cc: Thomas R. Mason, Esq.